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November 21, 2019

**VIA ECF ONLY**

Hon. Debra C. Freeman, U.S.M.J.  
United States Courthouse  
500 Pearl St.  
New York, NY 10007-1312

**RE: Harleysville Insurance Company of New York v. 12 East 88th LLC et al.  
Docket No.: 1:18-cv-12248-AT-DCF**

Dear Judge Freeman:

In furtherance of the case management conference conducted before your Honor on November 18, 2019, the parties have met and conferred regarding establishing a comprehensive amended discovery plan as set forth below.

As discussed, this case involves a claim under a builder's risk insurance policy in which coverage for the property damage portion of the claim was resolved prior to litigation. The portions of the claim which are the subject of the present litigation are the defendants' claims for soft costs and business income. The primary impediment to resolution pre-litigation was a lack of documentation necessary to establish the period of net construction delay as required under the builder's risk policy.

We are pleased to advise that an exhaustive document discovery phase has now been substantially completed. In particular, the production of extensive e-mail records spanning a multi-year construction project from the defendants was delayed in large part due to unforeseen technical issues with various custodians of the e-mails (beyond the control of defense counsel), which in turn delayed defense counsel's review of the e-mails prior to production. Only recently were thousands of e-mails finally produced on October 29<sup>th</sup> and 31<sup>st</sup>. In addition, significant third-party discovery (approximately 45 document subpoenas) were served within the past month, and only a couple of subpoena responses remain outstanding as of the present date.

The parties agree that with document production substantially completed, we are at a natural point in the litigation to allow the parties an opportunity to reassess their respective positions regarding settlement before proceeding with additional discovery. The proposed amended discovery plan includes a brief pause in discovery, which is designed to allow the party's respective experts and consultants sufficient time to review the voluminous document discovery generated to date and provide updated opinions. This pause will further provide the parties a meaningful opportunity to revisit settlement, potentially with the assistance of a mediator, to hopefully resolve this case

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without the need for further litigation. However, if the matter cannot be settled, the proposed discovery plan provides for the parties to quickly complete the remaining discovery tasks needed in preparation for trial.

Please note, defense counsel has a trial scheduled in Montgomery County New York starting on Monday, February 24, 2019, which is expected to last a week. Accordingly, we have not scheduled any depositions the weeks of February 17<sup>th</sup> and 24<sup>th</sup> to avoid conflicts with final trial preparation and trial.

**Proposed Amended Discovery Schedule**

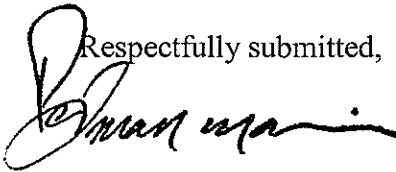
1. Mediation and/or settlement discussions to be completed by January 25, 2020. Parties have blocked out the week of January 20<sup>th</sup> to 25<sup>th</sup> to conduct formal meetings in New York City with the principal decision makers on both sides attending in person.
2. All fact discovery to be completed by Friday, March 20, 2020. The parties have agreed to the proposed schedule of depositions as follows:
  - Deposition of Harleysville's two 30(b)(6) witnesses are currently scheduled for January 29 and 30, 2020 in New York City;
  - Deposition of Andrew Till is currently scheduled for week of February 3<sup>rd</sup> to 7<sup>th</sup>, in New York City;
  - Deposition of Matthew Barron is currently scheduled for week of February 3<sup>rd</sup> to 7<sup>th</sup>, in New York City;
  - Deposition of Brendan Fennell is currently scheduled for the week of February 10<sup>th</sup> to 15<sup>th</sup>, in New York City;
  - Deposition of Steve Talay is currently scheduled for the week of February 10<sup>th</sup> to 15<sup>th</sup>, in New York City;
  - Deposition of Tom Li is currently scheduled for February 10<sup>th</sup> to 15<sup>th</sup>, 2020, in New York City;
  - Deposition of Maeve Ives is currently scheduled for March 16<sup>th</sup> to March 20<sup>th</sup>, 2020, in New York City (if necessary);
  - Deposition of Jonathan Simon is currently scheduled for March 16<sup>th</sup> to March 20<sup>th</sup>, 2020, in New York City (if necessary);
  - Deposition of third-party subpoena fact witness, Robert Hinton, to be noticed and conducted the week of March 2<sup>nd</sup> to 6<sup>th</sup>, in the Tampa / St. Petersburg, Florida area.
  - Deposition of third-party subpoena fact witness, Michael Guzewicz, to be noticed and conducted the week of March 2<sup>nd</sup> to 6<sup>th</sup>, in the Philadelphia, Pennsylvania area (if necessary).

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- Deposition of third-party subpoena fact witness, Joseph Cannova of Levvit-Furist Associates to be to be noticed and conducted the week of March 9<sup>nd</sup> to 13<sup>th</sup>, in the greater New York City area.
  - Deposition of third-party subpoena fact witnesses, Tracey Girgio and/or Jean Klein of KeevelySpero Whitelaw to be to be noticed and conducted the week of March 9<sup>nd</sup> to 13<sup>th</sup>, in the greater New York City area.
  - Deposition of third-party subpoena fact witness, Jun Kobayashi of For the Record to be to be noticed and conducted the week of March 9<sup>nd</sup> to 13<sup>th</sup>, in the greater New York City area;
3. Rule 26(f) expert reports to be exchanged no later than April 21, 2020.
  4. Expert depositions to be completed by May 22, 2020.
  5. Pretrial conference to be scheduled with the Court thereafter.

We thank the Court for its time and assistance in this matter.

Respectfully submitted,  


Steven P. Nassi

cc: Jonathan Lerner, Esq. (VIA ECF)